

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE NATIONAL RETIREMENT
FUND,

Plaintiffs,

-against-

OTG MANAGEMENT PHL, LLC; AIRBEV, LLC f/k/a
AIRBEV, INC.; D TERMINAL, L.P.; and OTG
MANAGEMENT, LLC f/k/a TERMINAL ONE, L.P.,

Defendants.

COMPLAINT

Plaintiffs, by their attorneys David C. Sapp, Esq. and Jennifer Oh, Esq., complaining of Defendants OTG Management PHL, LLC, Airbev, LLC f/k/a Airbev, Inc., D Terminal, L.P., and OTG Management, LLC f/k/a Terminal One, L.P. (the “Defendants”), respectfully allege as follows:

NATURE OF ACTION

1. This is an action by plan fiduciaries to enforce the provisions of a collective bargaining agreement and certain statutory obligations imposed upon the Defendant by Section 515 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1145.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to Section 301(a) of the Labor Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a) and Sections 502(a), (e) and (f) of ERISA, 29 U.S.C. § 1132(a), (e) and (f).

VENUE

3. Venue is properly laid in this Court pursuant to Section 301(a) of the LMRA, 29 U.S.C. § 185(a); Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2); and 28 U.S.C. § 1391(b).

THE PARTIES

4. Plaintiff National Retirement Fund (“Retirement Fund”) is established and maintains a plan (the “Plan”) to provide retirement income to employees for whom contributions are made by employers. As such, it is an “employee pension benefit plan” as defined in Section 3(2) of ERISA, 29 U.S.C. § 1002(2). The Plan is maintained pursuant to one or more collective bargaining agreements between employee organizations and various employers, which require such employers to contribute to the Retirement Fund. As such, the Retirement Fund is a “multiemployer plan,” within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C. § 1002(37)(A).

5. The Retirement Fund is administered by a Board of Trustees composed of an equal number of employer and employee representatives, as required by Section 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5). The Board of Trustees is the “plan sponsor” with respect to the Plan pursuant to Section 3(16)(B)(iii) of ERISA, 29 U.S.C. § 1002(16)(B)(iii).

6. Plaintiff Trustees of the Retirement Fund exercise discretionary authority, control and responsibility with respect to management and administration of the Retirement Fund and Plan and disposition of Retirement Fund assets. As such, Plaintiff Trustees of the Retirement Fund are fiduciaries with respect to the Plan, within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), as defined in Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A). The Retirement Fund maintains its principal administrative offices at 333 Westchester Avenue, North Building, White Plains, New York 10604, which is within the Southern District of New York.

7. Upon information and belief, at all relevant times herein, Defendant OTG Management PHL, LLC is a Delaware limited liability company authorized to do business in Pennsylvania having or having had its principal place of business at 1501 Lower State Road, Suite 102, North Wales, Pennsylvania 19454.

8. Upon information and belief, at all relevant times herein, Defendant Airbev, LLC f/k/a Airbev, Inc. is a Delaware limited liability company having or having had its principal places of business at 335 West Butler Avenue, Suite 120, Chalfont, Pennsylvania 18914.

9. Upon information and belief, at all relevant times herein, Defendant D Terminal, L.P. is a Pennsylvania limited partnership having or having had its principal place of business at 1 International Plaza, Suite 130, Philadelphia, Pennsylvania 19113.

10. Upon information and belief, at all relevant times herein, Defendant OTG Management, LLC f/k/a Terminal One, L.P. is a Delaware limited liability company authorized to do business in Pennsylvania having or having had its principal place of business at 1501 Lower State Road, Suite 102, North Wales, Pennsylvania 19454.

11. The Philadelphia Joint Board Workers United, SEIU (the “Union”) is an unincorporated “employee organization” as defined in Section 3(4) of ERISA, 29 U.S.C. § 1002(4). Upon information and belief, at all times material hereto, Defendants were a party to a series of Collective Bargaining Agreements with the Union (“Bargaining Agreements”), which obligated Defendants to make contributions to the Retirement Fund. Upon information and belief, employee benefit fund contributions to the Retirement Fund were and are due to be paid by Defendants.

**AS AND FOR A FIRST CLAIM FOR RELIEF BY
PLAINTIFF TRUSTEES OF THE RETIREMENT FUND AGAINST DEFENDANTS
OTG MANAGEMENT PHL, LLC AND AIRBEV, LLC F/K/A AIRBEV, INC.**

12. Plaintiff Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs “1” through “11” of this Complaint with the same force and effect as if set forth at length herein.

13. Upon information and belief, in or about 2018, as permitted by the Retirement Fund’s Agreement and Declaration of Trust (“Trust Agreement”) and ERISA, the Retirement Fund performed an audit of the books and records of Defendants OTG Management PHL, LLC and Airbev, LLC f/k/a Airbev, Inc. for the period of January 1, 2014 through and including December 31, 2016. The audit revealed audit deficiencies of contributions totaling \$8,298.56 due to the Retirement Fund, plus interest thereon through the date of the audit deficiency notice in the amount of \$2,518.67, and liquidated damages in the amount of \$2,518.67. By the audit deficiency notice dated September 5, 2018 (the “Airbev Audit Deficiency Notice”), the Retirement Fund demanded payment of the outstanding balance. (A copy of the Airbev Audit Deficiency Notice is annexed hereto as Exhibit “A”).

14. Audit deficiencies for contributions plus interest thereon and liquidated damages due to the Retirement Fund from Defendants OTG Management PHL, LLC and Airbev, LLC f/k/a Airbev, Inc. for the period of January 1, 2014 through and including December 31, 2016 have not been paid and are now due and owing. By reason thereof, Defendants OTG Management PHL, LLC and Airbev, LLC f/k/a Airbev, Inc. are liable to Plaintiff Retirement Fund in the sum of \$13,335.90 for the period stated, plus interest and liquidated damages on the principal amount of audit deficiencies from September 5, 2018, the date of the Airbev Audit Deficiency Notice, through the date of judgment, and attorneys’ fees and costs.

**AS AND FOR A SECOND CLAIM FOR RELIEF BY
PLAINTIFF TRUSTEES OF THE RETIREMENT FUND AGAINST
DEFENDANTS OTG MANAGEMENT PHL, LLC AND D TERMINAL, L.P.**

15. Plaintiff Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs “1” through “14” of this Complaint with the same force and effect as if set forth at length herein.

16. Upon information and belief, in or about 2018, as permitted by the Retirement Fund’s Agreement and Declaration of Trust (“Trust Agreement”) and ERISA, the Retirement Fund performed an audit of the books and records of Defendants OTG Management PHL, LLC and D Terminal, L.P. for the period of January 1, 2014 through and including March 31, 2017. The audit revealed audit deficiencies of contributions totaling \$8,114.47 due to the Retirement Fund, plus interest thereon through the date of the audit deficiency notice in the amount of \$2,174.84, and liquidated damages in the amount of \$2,174.84. By the audit deficiency notice dated September 5, 2018 (the “D Terminal Audit Deficiency Notice”), the Retirement Fund demanded payment of the outstanding balance. (A copy of the D Terminal Audit Deficiency Notice is annexed hereto as Exhibit “B”).

17. Audit deficiencies for contributions plus interest thereon and liquidated damages due to the Retirement Fund from Defendants OTG Management PHL, LLC and D Terminal, L.P. for the period of January 1, 2014 through and including March 31, 2017 have not been paid and are now due and owing. By reason thereof, Defendants OTG Management PHL, LLC and D Terminal, L.P. are liable to Plaintiff Retirement Fund in the sum of \$12,464.15 for the period stated, plus interest and liquidated damages on the principal amount of audit deficiencies from September 5, 2018, the date of the D Terminal Audit Deficiency Notice, through the date of judgment, and attorneys’ fees and costs.

**AS AND FOR A THIRD CLAIM FOR RELIEF
BY PLAINTIFF TRUSTEES OF THE RETIREMENT FUND
AGAINST DEFENDANTS OTG MANAGEMENT PHL, LLC
AND OTG MANAGEMENT, LLC f/k/a TERMINAL ONE, L.P.**

18. Plaintiff Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs “1” through “17” of this Complaint with the same force and effect as if set forth at length herein.

19. Upon information and belief, in or about 2018, as permitted by the Retirement Fund’s Agreement and Declaration of Trust (“Trust Agreement”) and ERISA, the Retirement Fund performed an audit of the books and records of Defendants OTG Management PHL, LLC and OTG Management, LLC f/k/a Terminal One, L.P. for the period of January 1, 2014 through and including December 31, 2016. The audit revealed audit deficiencies of contributions totaling \$22,646.13 due to the Retirement Fund, plus interest thereon through the date of the audit deficiency notice in the amount of \$7,228.42, and liquidated damages in the amount of \$7,228.42. By the audit deficiency notice dated September 5, 2018 (the “OTG Audit Deficiency Notice”), the Retirement Fund demanded payment of the outstanding balance. (A copy of the OTG Audit Deficiency Notice is annexed hereto as Exhibit “C”).

20. Audit deficiencies for contributions plus interest thereon and liquidated damages due to the Retirement Fund from Defendants OTG Management PHL, LLC and OTG Management, LLC f/k/a Terminal One, L.P. for the period of January 1, 2014 through and including December 31, 2016 have not been paid and are now due and owing. By reason thereof, Defendants OTG Management PHL, LLC and OTG Management, LLC f/k/a Terminal One, L.P. are liable to Plaintiff Retirement Fund in the sum of \$37,102.97 for the period stated, plus interest and liquidated damages on the principal amount of audit deficiencies from

September 5, 2018, the date of the OTG Audit Deficiency Notice, through the date of judgment, and attorneys' fees and costs.

WHEREFORE, Plaintiffs respectfully pray for an order and judgment:

a. Directing Defendants OTG Management PHL, LLC and Airbev, LLC f/k/a Airbev, Inc. to pay to the Retirement Fund the principal sum of audit deficiencies in the amount of \$8,298.56 as required by the September 5, 2018 Airbev Audit Deficiency Notice; and

b. Directing Defendants OTG Management PHL, LLC and Airbev, LLC f/k/a Airbev, Inc. to pay to the Retirement Fund interest on the principal audit deficiency amount of \$8,298.56 through the date of the September 5, 2018 Airbev Audit Deficiency Notice in the amount of \$2,518.67 and interest on the principal amount of audit deficiencies from the date of the September 5, 2018 Airbev Audit Deficiency Notice to the date of judgment, computed at an interest rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(B) of ERISA, 29 U.S.C. § 1132(g)(2)(B); and

c. Directing Defendants OTG Management PHL, LLC and Airbev, LLC f/k/a Airbev, Inc. to pay to the Retirement Fund liquidated damages on the audit deficiencies, to be computed at a rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(C) of ERISA, 29 U.S.C. § 1132(g)(2)(C); and

d. Directing Defendants OTG Management PHL, LLC and D Terminal, L.P. to pay to the Retirement Fund the principal sum of audit deficiencies in the amount of \$8,114.47 as required by the September 5, 2018 D Terminal Audit Deficiency Notice; and

e. Directing Defendants OTG Management PHL, LLC and D Terminal, L.P. to pay to the Retirement Fund interest on the principal audit deficiency amount of \$8,114.47 through the date of the September 5, 2018 D Terminal Audit Deficiency Notice in the amount of

\$2,174.84 and interest on the principal amount of audit deficiencies from the date of the September 5, 2018 D Terminal Audit Deficiency Notice to the date of judgment, computed at an interest rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(B) of ERISA, 29 U.S.C. § 1132(g)(2)(B); and

f. Directing Defendants OTG Management PHL, LLC and D Terminal, L.P. to pay to the Retirement Fund liquidated damages on the audit deficiencies, to be computed at a rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(C) of ERISA, 29 U.S.C. § 1132(g)(2)(C); and

g. Directing Defendants OTG Management PHL, LLC and OTG Management, LLC f/k/a Terminal One, L.P. to pay to the Retirement Fund the principal sum of audit deficiencies in the amount of \$22,646.13 as required by the September 5, 2018 OTG Audit Deficiency Notice; and

h. Directing Defendants OTG Management PHL, LLC and OTG Management, LLC f/k/a Terminal One, L.P. to pay to the Retirement Fund interest on the principal audit deficiency amount of \$22,646.13 through the date of the September 5, 2018 OTG Audit Deficiency Notice in the amount of \$7,228.42 and interest on the principal amount of audit deficiencies from the date of the September 5, 2018 OTG Audit Deficiency Notice to the date of judgment, computed at an interest rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(B) of ERISA, 29 U.S.C. § 1132(g)(2)(B); and

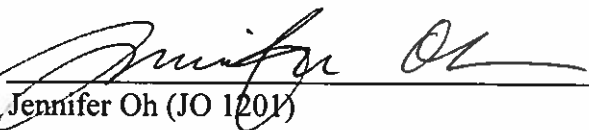
i. Directing Defendants OTG Management PHL, LLC and OTG Management, LLC f/k/a Terminal One, L.P. to pay to the Retirement Fund liquidated damages on the audit deficiencies, to be computed at a rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(C) of ERISA, 29 U.S.C. § 1132(g)(2)(C); and

j. Directing Defendants to pay to the Retirement Fund the reasonable attorneys' fees and costs of the action, pursuant to Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D); and

k. Granting such other legal and equitable relief as the Court deems appropriate.

Dated: October 2, 2018
White Plains, New York

**TRUSTEES OF THE NATIONAL
RETIREMENT FUND, Plaintiffs**

By: 
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